

Opinions for the week of April 5 – April 9, 2021

USA v. Marquis Watts No. 20-2198

Submitted March 3, 2021 — Decided April 5, 2021

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:18CR00173-001 — **Richard L. Young**, *Judge*. Before DANIEL A. MANION, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Marquis Watts appeals his sentence of 192 months' imprisonment for conspiring to distribute and distributing heroin and methamphetamine. Watts argues that because the district court failed to assess adequately the factors under 18 U.S.C. § 3553(a), it imposed a sentence that is unreasonably long. Because Watts contests only the weight that the court, in its discretion, assigned to the sentencing factors, and the record reflects that it meaningfully considered Watts's personal history and arguments in mitigation, we affirm.

Andrew Pavlicek v. Andrew Saul No. 20-1809

Argued March 3, 2021 — Decided April 7, 2021

Case Type: Civil

Western District of Wisconsin. No. 19-cv-41-slc — **Stephen L. Crocker**, *Magistrate Judge*. Before MANION, WOOD, and ST. EVE, *Circuit Judges*.

MANION, *Circuit Judge*. Andrew Pavlicek, a 49-year-old man whose anxiety manifests in persistent tremors and seizures, sometimes causing him to pass out, challenges his denial of Disability Insurance Benefits and Supplemental Security Income. He argues that the administrative law judge erred by (1) giving inadequate reasons for rejecting the opinion of his treating psychiatrist, (2) affording too much weight to the opinions of two non-examining agency physicians, and (3) posing hypothetical questions to the vocational expert that failed to account for his limitations in concentration, persistence, and pace. We affirm because, despite Pavlicek's contentions and some imperfections in the ALJ's reasoning, the ALJ's decision was supported by substantial evidence.

USA v. Clemmie Carter No. 20-2409

Submitted April 2, 2021 — Decided April 8, 2021

Case Type: Criminal

Eastern District of Wisconsin. No. 14-CR-009 — **William C. Griesbach**, *Judge*. Before DIANE S. SYKES, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Clemmie Carter, a federal inmate who is being treated for HIV, sought compassionate release based on his heightened risk of contracting a severe case of COVID-19. The district court denied the motion after finding that no evidence supported Carter's argument that his condition made him particularly vulnerable to the virus. Because the judge did not abuse his discretion in denying the motion, we affirm.

Wesley Gamble v. FCA US LLC No. 20-2254

Submitted March 2, 2021 — Decided April 8, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-4520 — **Virginia M. Kendall**, *Judge*. Before RIPPLE, HAMILTON, and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Wesley Gamble was fired by Fiat Chrysler Automobiles (FCA) in October 2017 for violating FCA's anti-harassment policy for a second time. Asserting that he was treated unfairly during FCA's investigation, and ultimately fired, due to his race (he is African American), age (he was 63), and disability (he had battled lymph node cancer), Gamble sued FCA for employment discrimination. The district court entered summary judgment for FCA. Gamble appeals the judgment only with respect to his race discrimination claim. Because no reasonable jury could infer that Gamble was treated less favorably than a similarly situated employee outside of his protected class, we affirm the judgment of the district court.

Bruce Melton v. Pavilion Behavioral Health System No. 20-2399

Submitted April 2, 2021 — Decided April 9, 2021

Case Type: Civil

Central District of Illinois. No. 17-2112 — **Colin S. Bruce**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

The Pavilion Behavioral Health System, a childcare facility, fired Bruce Melton from his kitchen job after a routine background check revealed his criminal convictions. Melton sued Pavilion for unlawful discharge. Relying on the parties' agreement to arbitrate this dispute, the district court granted Pavilion's motion to compel arbitration and, later, its motion to confirm the arbitration award in its favor. Because the parties entered into an enforceable arbitration agreement and Melton presented no valid ground to vacate, modify, or correct the award, we affirm.

John K. MacIver Institute for Public Policy, Inc. v. Tony Evers No. 20-1814

Argued October 30, 2020 — Decided April 9, 2021

Case Type: Civil

Western District of Wisconsin. No. 3:19-cv-00649-jdp — **James D. Peterson**, *Chief Judge*.

Before MANION, ROVNER, and SCUDDER, *Circuit Judges*.

ROVNER, *Circuit Judge*. Two reporters from the John K. MacIver Institute for Public Policy, Inc., alleged that they were denied access to a press event held by Wisconsin Governor Tony Evers' office based on the viewpoint espoused by the organization. Because we have found no evidence of viewpoint discrimination under any First Amendment test with which we might view the claim, we affirm the district court's grant of summary judgment for Governor Evers.

Fernando Lopez v. Sheriff of Cook County No. 20-1681

Argued December 4, 2020 — Decided April 9, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16 C 10931 — **Edmond E. Chang**, *Judge*.

Before KANNE, WOOD, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Nothing much good happens after 3:00 a.m. The early morning hours of November 30, 2014 outside the Funky Buddha Lounge on Chicago's West Side were no different. That morning, upon hearing a gunshot, Officer Michael Raines, an off-duty Cook County correctional officer out celebrating a friend's birthday, approached the scene of a scuffle between patrons outside the Lounge. Fernando Lopez was present and pulled a gun, firing two shots into the air. Having seen Lopez fire near people on a crowded street, Officer Raines confronted and shot Lopez multiple times in the span of three seconds. Lopez reacted by dropping his gun and scampering toward the sidewalk outside the bar. Just as Raines began to chase after him, Lopez's friend Mario Orta picked up the dropped gun and fired at Raines—but missed. Officer Raines then used Lopez as a human shield in a stand-off with Orta for several minutes until Orta fled. The scene was chaotic and everything happened fast. Lopez survived and brought a civil rights suit alleging Officer Raines used excessive force against him in violation of the

Fourth Amendment. The district court granted summary judgment for the defendants, concluding that Officer Raines was entitled to qualified immunity because his use of deadly force did not violate clearly established law. We affirm, though not without the same pause expressed by the district court. Our review of the record, including video footage of the events, leaves us with the impression that although the circumstances were volatile, Officer Raines may have been able to avoid any use of lethal force. We cannot conclude, however, that his decision to the contrary violated clearly established law.